

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

In Re: Juul Labs, Inc., Marketing, Sales
Practices, and Products Liability Litigation

Case No. 19-md-02913-WHO

**ORDER REGARDING BELLWETHER
SELECTION AND CASE/TRIAL
SCHEDULE**

Re: Dkt. Nos. 926 and 927

I thank the parties for their revised proposed bellwether selection procedures and case schedules. With some modifications, I will adopt the plaintiffs' suggestions because they are more likely to achieve a representative bellwether trial pool and meet in a realistic manner the aggressive trial schedule that I seek.

Bellwether Selection:

- Cut-off for Bellwether Selection Pool: Any action filed in or transferred to this Court by October 15, 2020 will be included in the bellwether selection pool.
- Selection of Bellwether Discovery Pool: On or before December 15, 2020, a total of 24 personal injury cases will be selected for the initial bellwether discovery pool. Plaintiff will select 6 cases, Defendants will collectively select 6 cases, and the Court will select 12 cases through a random selection process after excluding the 12 cases selected by the parties.
- Core Discovery: Core discovery of the bellwether discovery pool may begin immediately upon selection and will conclude on or before April 15, 2021. Core discovery for each discovery pool case will consist of no more than three case-specific fact witnesses: (1) the plaintiff, (2) a fact witness with knowledge as to plaintiff's JUUL use and/or JUUL-related injury that the parties will meet and confer to determine the appropriate witness, and (3) a treating medical provider who was principally responsible for the diagnosis and treatment

of plaintiff's injury if the plaintiff received medical treatment for the injury alleged.

- Case Strikes: After core discovery of the bellwether discovery pool, the Defendants (collectively) and Plaintiffs may each strike one case from nominee pool. Each party must exercise its strike by April 22, 2021.

- Selection of Bellwether Trials: On April 30, 2021, each party shall simultaneously submit under seal to the Court a letter not to exceed 12 pages identifying four cases from the remaining nominee pool that they contend are representative bellwether trial cases, the basis for their selections, and if appropriate, why the other cases are not representative or suitable bellwether trial candidates. The Court will then select a total of four cases to be set for bellwether trials, prioritizing for trial the order of the cases.¹

- Supplemental Fact Discovery: Additional fact discovery of the four bellwether trials may begin immediately after the Court's selection. The supplemental fact discovery for the first two bellwether trials must be completed by July 1, 2021. The deadline for supplemental fact discovery of the remaining two bellwether trial cases will be determined following a meet and confer of the parties, in consultation with the Court.

- Expert Discovery of Bellwether Trial Cases: Expert discovery for the first two bellwether trial cases must be completed by September 22, 2021. Specific deadlines related to expert discovery are set forth in Plaintiffs' proposed trial schedule (attached). Deadlines for expert discovery of the two bellwether trial cases will be determined following a meet and confer among the parties, in consultation with the Court.

///

¹ The Court will try each of the bellwether trials in San Francisco and will not select any case for which *Lexecon* is an issue. We will discuss how to resolve any *Lexecon* disputes at the next Case Management Conference on September 21, 2020.

Case Schedule:

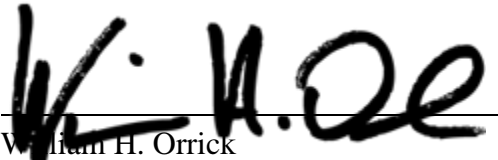
<u>Personal Injury (PI) Only:</u>	October 15, 2020
Close of PI bellwether nominee pool (complaints must be on file)	
<u>Government Entity (GE) Only:</u>	October 15, 2020
Deadline for submitting agreed upon or competing proposals for methodology for selecting GE bellwether trial cases	
<u>Government Entity (GE) Only:</u>	November 16, 2020
Close of GE bellwether trial pool (complaints must be on file and PFS must be completed for all potential GE bellwether trial candidates)	
Deadline for PI outstanding PFS	December 15, 2020
Deadline for Plaintiffs and Defense to select their PI nominees and provide to the Court (Court will then randomly select eight cases).	
Deadline to submit agreed or competing GE bellwether nominees	
<u>Personal Injury Only:</u>	January 7, 2021
Deadline to meet and confer on deferred pleading challenges	
<u>Class Cases Only:</u>	March 17, 2021
<ul style="list-style-type: none"> Plaintiffs Serve Class Certification Expert Reports Motion for Class Certification (as to California subclass, federal nationwide class, any other state(s) agreed or ordered to be included in first class bellwether trial(s)) 	
<u>Personal Injury Only:</u>	January 21, 2021
Deadline for bellwether plaintiffs to amend complaints	
<u>Personal Injury Only:</u>	February 5, 2021
Deadline for Defendants to file deferred pleading challenges	
<u>Personal Injury Only:</u>	March 1, 2021
Deadline to oppose deferred pleading challenges	
<u>Personal Injury Only:</u>	March 15, 2021
Deadline to reply to deferred pleading challenges	
<u>Personal Injury Only:</u>	April 2, 2021
Hearing on deferred pleading challenges	

<u>Personal Injury Only:</u>	April 30, 2021
Deadline for the parties to submit their proposed bellwether trial selections to the Court	
<u>Class Cases Only:</u>	June 16, 2021
<ul style="list-style-type: none"> • Opposition to Motion for Class Certification; • Defendants Serve Class Certification Response Reports • Defendants File <i>Daubert</i> Motions for Class Plaintiffs' Class Certification Experts 	
<u>Class Cases Only:</u>	July 14, 2021
<ul style="list-style-type: none"> • Reply in Support of Motion for Class Certification; • Plaintiffs Serve Class Certification Rebuttal Reports • Class Plaintiffs File <i>Daubert</i> Motions for Defendants' Class Certification Experts; • Class Plaintiffs File Oppositions to Defendants' <i>Daubert</i> Motions 	
<u>Class Cases Only:</u>	July 28, 2021
Defendants file Oppositions to Class Plaintiffs' <i>Daubert</i> Motions	
Substantial Completion of Fact Discovery	June 18, 2021
<u>Class Cases Only:</u>	August 13, 2021
Hearing on Motion for Class Certification	
Exchange of Generic Expert Reports	July 2, 2021
<u>Personal Injury Only:</u>	July 1, 2021
Deadline for supplemental case specific discovery in the First Two Trial Cases	
Exchange of Case-Specific Expert Reports in GE Bellwether Cases	July 1, 2021
Exchange of Rebuttal Generic Expert Reports	July 30, 2021
Exchange of Case-Specific Expert Reports in First Two PI Trial Cases	July 15, 2021
Exchange of Case-Specific Rebuttal Reports in GE and First Two PI BWs	August 16, 2021
Close of Expert Discovery (Generic and Case Specific Bellwether GE and First Two PI Trial Cases)	September 22, 2021
MSJ and <i>Daubert</i> Motions	September 30, 2021
MSJ and <i>Daubert</i> Oppositions	October 29, 2021

MSJ and <i>Daubert</i> Replies	November 12, 2021
Oral Argument: MSJ and <i>Daubert</i> Motions	December 10, 2021
Exchange of Civil Local Rule 16-10(b)(7), (8), (9), and (10) Materials	December 15, 2021
Pretrial Conference Statement, Jury Instructions, Exhibit List and Objections, Deposition Designations and Objections, and Motions in <i>Limine</i>	January 17, 2022
Pretrial Conference (Class, GE and First Two PI Trial Cases)	January 31, 2022
First Bellwether²	February 22, 2022
Second Bellwether	March 28, 2022
Third Bellwether	May 9, 2022
Fourth Bellwether	June 20, 2022
Fifth Bellwether	August 1, 2022

IT IS SO ORDERED.

Dated: September 9, 2020


 William H. Orrick
 United States District Judge

² I will determine the order of the bellwether trials after May 1, 2021.